



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Jaco Management, Inc.--Reconsideration

**File:** B-246156.2

**Date:** January 3, 1992

Jacob Gingerich for the protester, Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Dismissal of protest as untimely is affirmed where protester filed protest concerning a defective specification after award.

### DECISION

Jaco Management, Inc. requests reconsideration of our dismissal of its protest, concerning the award of a contract under solicitation No. 084B-003-91, issued by the Department of Veterans Affairs (VA). We found the protest was filed untimely. We affirm our dismissal.

The solicitation was issued to satisfy the agency's space requirement for a Department of Veterans Affairs outpatient clinic in Tallahassee, Florida. The solicitation required the submission of a lump-sum offer to provide certain items. These items included a requirement to provide installation of agency furnished radiographic and fluoroscopic x-ray units and components. At the pre-bid conference held June 24 and 25, 1991, the agency specifically stated that it would purchase all radiology equipment to be installed by the awardee and that information concerning the brand of equipment would be provided during the design phase of the contract.

Jaco, in its offer submitted on August 15, stated that its pricing on x-ray wiring was based on the installation of a Picker system design. In response to the contracting officer's concerns regarding Jaco's designation of the x-ray equipment to be installed, on September 24, Jaco stated that in its experience, the Picker system installation is less costly than the GE system and that if the VA selects a GE system for installation, the VA should add \$5,000 to its installation costs. By letter dated October 2, the agency

rejected Jaco's offer because its offer was conditioned upon the installation of a particular brand of radiology system and awarded the contract to Roger J. Osborne.

On October 9, Jaco filed its protest with our Office. Jaco maintained that the solicitation inadequately defined the specification for installation of the x-ray equipment and that the information available at the time was inadequate to reasonably justify the evaluation and award based on a defective specification. Although unclear from the protest submission, we assumed that the defect was not apparent in the initial solicitation and that it was only discovered during discussions between Jaco and the agency. We dismissed the protest as untimely, since our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation, incorporated after the initial submission of offers, be protested before the next closing time after the change was made to the solicitation. 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); NASCO Aircraft Brake, Inc., B-237860, Mar. 26, 1990, 90-1 CPD ¶ 330.

In its request for reconsideration, Jaco contends that we misunderstood its protest and that its protest is that Jaco's offer was improperly rejected because the contracting officer failed to understand its clarification letter of September 24 and because the award was not based on the most advantageous offer.

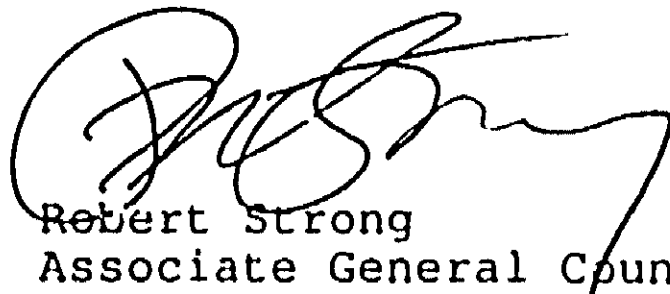
We disagree.

In its initial protest, Jaco specifically argued that the rejection of its offer was improper because the x-ray equipment specification was inadequate and did not provide for full and open competition. Jaco's original protest clearly expressed its belief that the solicitation should have clarified the x-ray equipment requirement and that any award without such a clarification was improper. Based on the protester's submissions, it appears that the solicitation did not provide for the installation of any particular brand of equipment. Moreover, in response to questions raised at the pre-bid conference, the agency stated that it would purchase all radiology equipment and that information concerning the brand of equipment would be provided during the design phase of the contract. Thus, Jaco's protest of the x-ray equipment requirement as defective, filed after award, is untimely. 4 C.F.R. § 21.2(a)(1); Englehard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324.

We are not persuaded by Jaco's attempt to characterize the basis of its protest as one of the agency's erroneous evaluation of the proposals. Jaco's allegation of improper evaluation is based on the very requirement that Jaco argues was defective. Jaco was aware of the agency's view that the solicitation did not seek space designed for any specific brand of x-ray equipment, at the latest, during discussions. It thus was incumbent on Jaco to file its protest prior to the next closing date.

In any event, we believe that Jaco's offer was properly rejected. Jaco conditioned its offer upon the agency's purchase of a particular brand of x-ray equipment, either Picker or GE, when the solicitation did not specify a particular brand and the agency specifically provided that it would purchase all radiology equipment to be installed and that information concerning the brand of equipment would be provided during the design phase of the contract. Jaco, by designating a particular type of equipment to be installed, limited the agency's right to purchase the x-ray equipment it determined would best satisfy its needs and did not demonstrate its willingness to perform in accordance with the requirements of the solicitation.<sup>1</sup>

The dismissal is affirmed.<sup>2</sup>

  
Robert Strong  
Associate General Counsel

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<sup>1</sup>We have been advised by the agency that there are at least four manufacturers of radiographic and fluoroscopic x-ray equipment.

<sup>2</sup>In a subsequent letter to our Office, Jaco asserts that the awardee's proposed clinic site is unacceptable under the solicitation terms. Jaco is not an interested party to raise this objection, since Jaco, on the basis of the rejection of its offer, would not be in line for award even if this protest was sustained. See Clean Air, Inc.--Recon., B-242582.2; B-242582.3, Apr. 24, 1991, 91-1 CPD ¶ 405.